

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RONALD FLEMING, )  
                        )  
Plaintiff,            )  
                        )  
v.                     ) Civil Action No. 02-164 Erie  
                        )  
SUPERINTENDENT, WOLFE, et al., )  
                        )  
Defendants.           )

**MOTION TO SET THIS CASE DOWN FOR BENCH TRIAL**

AND NOW, comes the trial defendants, Weaver, Tiller, Sullivan, Davison, Maldonado, Robinson, Wittel, Allen and Kreider, by their attorneys, Thomas W. Corbett, Jr., Attorney General, Kemal Alexander Mericli, Senior Deputy Attorney General, Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and submits the following:

1.       The upcoming trial of this case is based on the amalgamated allegations of four separate complaints. Docket entries, 3, 17, 59 and 93.
2.       None of them demand a jury trial.
3.       No such demand is endorsed on the face of the complaints themselves.
4.       The separate requests for relief of each complaint also do not incorporate one.
5.       The court entered an order refusing to allow the plaintiff to file a fourth supplemental complaint and the report and recommendation adopted by memorandum order is confined to their examination. Docket entries 118, 145,147.

6. The law plainly requires Mr. Fleming to have requested a jury trial. F.R.C.P. 38. He has not done so.

WHEREFORE, the case should be set down as a bench trial and the court and parties excused from preparations for a jury trial forthwith.

Respectfully submitted,

**THOMAS W. CORBETT, JR.  
Attorney General**

By: s/Kemal Alexander Mericli  
Kemal Alexander Mericli  
Senior Deputy Attorney General  
Attorney I.D. No. 27703

Susan J. Forney  
Chief Deputy Attorney General  
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL  
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564 Forbes Avenue  
Pittsburgh, PA 15219

Date: October 6, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within Motion to Set This Case Down for Bench Trial was served upon the following via first-class mail on October 6, 2005.

Ronald Fleming  
350 Bessemer Road  
Steelton, PA 17113

s/Kemal Alexander Mericli  
Kemal Alexander Mericli  
Senior Deputy Attorney General

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Date: October 6, 2005

